IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 375 OF 2005

Vahazul Haq Eshmidar Khan. ... Appellant.
Versus.
Mrs.Mariam Shaukatali Khan & ors. ... Respondents.

Shri R.M.Pandey for the Appellant.

Shri A.R.Shaikh for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 26th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. It is not in dispute that in the First Appeal pending in this Court, the Court Receiver, High Court, Mumbai, has been appointed as the Receiver in respect of the property in dispute and the deceased husband of the Respondent No.1 was appointed as an Agent of the Court Receiver.

2. The case of the Appellant/Plaintiff in this Appeal is that the deceased husband of the Respondent No.1 was in possession as the Agent of the Court Receiver in his capacity as a partner of the partnership firm in which the Appellant was allegedly a partner.

3. There is nothing on record to show that the deceased husband of the Respondent No.1 was appointed as Agent of the Court Receiver by this Court in his capacity as a

partner of the firm. In view of this position no fault can be found with the approach of the learned trial Judge if he recorded a prima-facie finding that the Appellant was not in possession of the suit property. It is not in dispute that the Appellant has made an application in the pending First Appeal praying that he may be appointed as the Agent of the Court Receiver and the said application is pending.

4. In view of what is stated above, no case is made out for interference in the discretionary order passed by the learned trial Judge by which the prayer for temporary injunction in favour of the Appellant has been refused.

5. Hence the Appeal is dismissed with no order as to costs.

6. All contentions of the parties in the pending suit are expressly kept open.

7. Parties to act on an authenticated copy of this order.

Judge.